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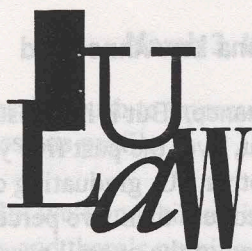
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Maurer School of Law  
Bloomington





# INDIANA LAW ANNOTATED

Vol. 12 No. 8  
March 3, 1997

School of Law — Bloomington

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## Indiana Law Annotated

School of Law — Bloomington

### Submissions:

ILA is published every Monday. Information and articles for ILA should be submitted by **Thursday at 10am** for inclusion in Monday's edition. Submissions can be given to Karen Miller in Room 240, put in Karen Miller's box in the faculty mailroom on the second floor or placed in the envelope by the bulletin board across from the elevator on the ground floor. In addition, submissions can be sent through campus E-mail to millerk@law.indiana.edu (this is preferred).

### Letters to the Editor:

Letters should be submitted by **Wednesday at 5 pm** for possible inclusion in Monday's issue. Letters must be delivered in person to Karen Miller in Room 240, and must contain the author's name and a telephone number where the author can be reached. Letters may not be submitted electronically. Letters will be published only on a space-available basis, and the decision of the Editor is final on all matters relating to the publication of letters.

## ANNUAL GLOBAL SYMPOSIUM THIS FRIDAY, MARCH 7

The *Indiana Journal of Global Legal Studies* will present its annual symposium this week, on Friday, March 7. This year's symposium is "The Public's Health in the Global Era: Challenges, Responses and Responsibilities." All students are welcome to attend all or part of the program. Here is the schedule:

8:45 to 9am

Welcoming Remarks, Moot Court Room, Joseph Hoffmann, Associate Dean

9 to 10:30am

Global Challenges: The Globalization of Public Health: The Problem of Emerging Infectious Diseases, David Fidler, Associate Professor

Respondents: Dr. Margaret A. Hamburg, Commissioner, New York City Department of Health, New York and Dennis Pirages, Professor and Director of the Harrison Program on the Future World Agenda, University of Maryland.

Moderator: Dr. Robert Holden, Dean and Walter J. Daly Professor, IU School of Medicine.

10:30 to 10:45am

Morning Break

10:45 to 12:15pm

Global Responses: The Search for Cures and the Development of Pharmaceuticals, Dr. Stuart R. Walker, Professor and Director of the Centre for Medicines Research, Carshalton, England

Respondents: Dr. Louis Lasagna, Director of the Center for the Study of Drug Development, Tufts University and Dr. Allan J. Weinstein, Vice President, Lilly Research Laboratories, Eli Lilly and Company, Indianapolis.

Moderator: Deborah F. Freund, Vice Chancellor for Academic Affairs and Dean of the Faculty, IU - Bloomington.

12:15 to 2pm

Adjourn for lunch

2 to 3:30pm

Global Responsibilities: Justice and Ethics in the Era of Global Public Health Dale Jamieson, Henry Luce Professor in Human Dimensions of Global Change, Carleton College, Northfield, Minnesota.

Respondents: Satvinder S. Juss, University of Westminster, Harkness Fellow at US Dept. of Health & Human Services, DC and Dr. Eibe Riedel, Chair of German and Foreign Public Law, International Law and European Law, University of Mannheim, Germany.

Moderator: N. Brian Winchester, Director of the Center for the Study of Global Change and Professor, IU-Bloomington.

3:30 to 4:30pm

General Discussion

## FROM THE EDITOR'S DESK

Damn U.S. News, anyway!

I hate to admit it, but suddenly I've got a much better understanding of why Gene Keady always has that absurd scowl



on his face, when — year after year — his Purdue basketball teams finish at or near the top of the Big Ten (and kick Indiana's butt to boot), yet can't get any respect from the so-called experts who generate the Top Twenty polls. Pretty soon, I'm afraid, I may start to look like old Gene...

As you have no doubt learned by now, this year's U.S. News rankings purport to tell us that our law school has dropped — in one year — from 37<sup>th</sup> to 44<sup>th</sup> best in the country. This, of course, is utter nonsense. (Just as much as it would also be utter nonsense if U.S. News had said we jumped from 37<sup>th</sup> to 30<sup>th</sup> in one year!)

But the big problem, as you also undoubtedly realize, is that far too many people inside and outside of the legal profession are taking this U.S. News crapola seriously. Indeed, there is clearly a major dose of self-fulfilling prophecy in what has happened to us this year.

For example, if you look more closely at the current U.S. News rankings, you will see that — on one of the few individual criteria that make any sense at all — our school actually moved **UP** since last year in the category of academic reputation, from 30<sup>th</sup> to 29<sup>th</sup>. On the other hand, in the parallel category of reputation among judges and lawyers (who, at least compared to deans and law professors, tend to rely much more on what they are told to believe by U.S. News, and much less on their own judgment), we fell slightly, from 33<sup>rd</sup> to 35<sup>th</sup>. After the new rankings, I expect these same two categories to diverge even more next year.

Still, you might wonder, with reputational rankings like 29<sup>th</sup> and 35<sup>th</sup> in the country, why is our overall ranking way down there at 44<sup>th</sup>? I

truly wish I could give you a straight answer to that question, but I can't, despite the fact that I've spent hours on the U.S. News WorldWideWeb site trying to figure it out.

I still can't understand, for example, how the University of Tennessee finished ahead of us, when we blew them away in both academic and bench/bar reputation as well as the LSAT scores of our 1996 entering class (three of the most important factors in the overall rankings). The same goes for Utah (?!), and Case Western, too. Because U.S. News chose to hide away several of their statistical categories from view on their Web site, there's no way for me even to tell whether their figures are correct or mistaken, let alone why the overall rankings turned out the way they did this year.

One part of the answer may be that, although most people who know anything about us seem to think that we're a pretty darn good law school that's getting even better, the U.S. News rankings inevitably must be based in large part on a retrospective snapshot of a single moment in time — namely, the performance, both in the job market and on the Indiana bar exam, of a class of already-graduated students. This, of course, is not necessarily indicative of the quality or likely performance of **ANY** of the students who are here now.

Indeed, there are good reasons to believe that the bar-passage and job-placement figures used by U.S. News this year may **NOT** reflect the typical performance of our students. For example, according to this year's U.S. News survey, our Class of 1996 exceeded the overall pass rate on the Indiana bar by about three percentage points (82% to 79%). Of course, we ought not be satisfied with that level

of performance. But it is reassuring to note that, over the past five years, only one other I.U. graduating class has finished less than five percentage points ahead of the overall pass rate on the Indiana bar. In short, history teaches us that our Indiana pass rate (compared to the overall pass rate) is likely to be higher next year -- although current 3L's certainly shouldn't take that prediction for granted!

Even more frustrating is what U.S. News did with respect to job-placement data. Last year, our overall ranking suffered substantially because of the sluggish placement record (72nd in the country) of our Class of 1995. Now, I've already reported to you that, thanks in part to recent positive changes in the Career Services Office, the Class of 1996 has done much better, improving by almost ten percent over the Class of 1995. But U.S. News, in its infinite wisdom, made an editorial decision earlier this year to re-use the same Class of 1995 job-placement stats for the **SECOND YEAR IN A ROW** — so, one of our worst job-placement performances in recent memory has now been held against us by U.S. News not once, but twice.

If — instead of focusing on the Classes of 1995 and 1996 — you were to use our five-year average statistics (or, for that matter, the statistics of **ANY** other recent I.U. class), you'd find that our bar exam and job-placement numbers are perfectly consistent with our academic and bench/bar reputations. In short, we would be sitting somewhere around 30<sup>th</sup> place. Moreover, that doesn't even take account of the additional fact that the Classes of 1995 and 1996 were admitted to the law school way back in 1992 and 1993, before our recent



aggressive push to improve our admissions profile.

But we're not sitting in 30th place, and there's nothing we can do to change that fact right away. Only the improved performance of those students who are here now — on the Indiana bar exam, and in the job market — will have a positive effect on next year's U.S. News rankings. And that takes us right back to the problem of self-fulfilling prophecies. If employers pay attention to these damned rankings instead of making their own independent decisions, it will be harder for our current students to get their desired jobs, and we will continue to slip in the damned rankings. This is serious business, and I'm fighting mad about it. So, I've asked Kathleen Austin from the Career Services Office to arrange an open forum on Tuesday, at noon, in Room 121, at which I plan to talk about the U.S. News rankings and how we might deal with them. I hope you'll be able to attend, and please bring any ideas or suggestions you may have.

Meanwhile, we're in the middle of a highly competitive admissions season, which will directly determine the academic quality of the Class of 2001 (which, as measured solely by LSAT and GPA, is another component of the U.S. News rankings). The Admissions Office and Admissions Committee have put unprecedented effort (and significant money) into recruiting a top-notch entering class; thus, this U.S. News slap-in-the-face could not possibly have come at a worse time for us. It's just another example of the self-fulfilling nature of these rankings — naive undergraduates will tend to go wherever the rankings tell them to go, unless someone or something shakes them out of such unjustified

reliance. The bottom line, here, is that we simply **MUST** pull out all of the stops to prevent U.S. News from undermining the progress we are poised to make in admissions. I'll talk about that a little more on Tuesday as well.

Now, for the **GOOD** news. We have just received our report from the ABA/AALS Site Inspection Committee, which visited us last fall (something, by the way, **NO** U.S. News editor or writer has **EVER** done, to my knowledge) for purposes of re-accreditation. The members of the Committee spent countless person-hours reviewing our files and data, interviewing students and faculty, sitting in on classes, etc. Let me quote a couple of paragraphs from what can only be described as a glowing report:

"In general, the team was impressed by the quality and strength of this institution. The law school fits well within a university that retains the flavor of a major 'public' institution while moving in aggressive ways into the 'global' environment of the 21st Century. ...

"IU Bloomington School of Law possesses a university administration committed to decentralized decision processes yet supportive of its professional schools, one of the most functional and attractive law school buildings anywhere, an administration and faculty working in relative harmony toward articulated goals of academic excellence and professional training, and a student body with depth and diversity. All of this takes place in an attractive midwestern setting with surprising ties to various international and foreign venues. The few difficulties we noted thus should be addressed against the backdrop of an overall

## Indiana Law Annotated

perception of unusual quality and strength."

So, as you can see, a diverse group of experienced but neutral deans, professors, law librarians, and lawyers has concluded -- after a lengthy site visit and examination -- that we're a law school of "unusual quality and strength." But then, the Site Inspection Committee made up its own mind, and didn't pay any attention to the opinions of the office computer at U.S. News.

I'll conclude this week with what the AALS has set out as its official position on the U.S. News rankings:

"[W]e believe that any ranking or rating of law schools, based upon data the magazine has asked deans to provide, must be meaningless or grossly misleading. The survey does not, and could not, measure many important factors involved in evaluating the quality of law schools. Statistics cannot reflect such factors as the quality of faculty, curricular offerings, adequacy of library resources, and quality of life. Most importantly, the U.S. News ranking or rating is, in significant part, based on responses of legal educators, judges, practicing lawyers, and others who could not possibly know enough about each of the 175 ABA accredited law schools to rank or rate the law schools by quality quartiles. This survey is designed more to sell magazines than to inform the public about the relative merit of law schools."

As you can tell, I'm more than a little upset about U.S. News. (Could this be their revenge for those nasty columns I wrote about them last fall?) At the same time, I know in my heart that this, too, shall pass. We will weather the storm, and we



will someday get the recognition and the credit I believe we deserve. Our students and our faculty are simply too good to be disrespected this way for long. Hang in there.

That's all for this week. Take care, and bye for now. — Joe Hoffmann

P.S. — I need to correct an error that was made in the ILA a couple of weeks ago. Brandon Truman's name was inadvertently omitted from a list of members of the ATLA Trial Team for the trial competition in Louisville. Sorry, Mr. Truman, for that error.

## LETTERS TO THE EDITOR

Dear Editor,

Recently, you invited response to the comment that perhaps church and state should be separated more than is presently the case. I wish to respectfully disagree with this suggestion, for the following reason.

The United States was, from time of its creation, acknowledged to be dependent on God by many of the founders. I will not list quotes and writing excerpts of the Christian founders here, as I believe most of us have heard many of them. But what is often ignored is the inherent intermingling of Christianity and government for most of the span of our country's existence. For example, the New England Primer, and other primers used into the 19<sup>th</sup> century in public schools, taught children to read with Bible verses and scriptural statements. And these primers did not confine themselves to using generic "morality" phrases, but freely quoted passages from the teaching of Jesus Christ. Furthermore, every one of the early state constitutions acknowledged the authority of God; the Delaware constitution of 1776, for example,

required a belief in God the Father, Jesus Christ, and the Holy Spirit in order to hold office. John Jay, the first Supreme Court Chief Justice, publicly advocated the election of Christian leaders in our nation. And, in *Holy Trinity Church v. United States*, 143 U.S. 457, the Supreme Court appropriates almost 10 pages of its opinion to tracing the influence of, and integration of, Christianity in American government and affairs, concluding that is a "religious people," and that this is not just the voice of some individuals, but is an "organic utterance."

Of course, society has changed since then, and more recent Supreme Court decisions have redefined the scope of constitutionally permissible religious activity. In this recent trend, Christianity has been placed on the same level as any spiritual activity or belief that could be conceived of. The deference to Christianity as "absolute truth" has been replaced with an indiscriminating treatment of all spiritual activities. Be that as it may, the historical record shows that the utter foundation of these United States was on the truth of God's authority, not on morality, or Buddha, or Mohammed; rather, the authority of God and the Lordship of Jesus Christ were the principles upon which we were established and originally governed.

As a democracy, the people have every right to change their government. If a societal acceptance of a more diverse national spirituality has emerged, then let the government respond accordingly. If the majority of the population does not now believe Judeo-Christian teaching to be truth, then let the word of God be removed from our public areas. But as we deconstruct what was

established centuries ago, let us realize that we are removing the foundation of our America. Perhaps it is believed that accepting the equal validity of all spiritual beliefs, and thus eradicating historical Christian practices from government, will result in a better, stronger, more loving nation and citizenry. I disagree. And, I must admit, I don't know exactly how religion and government should interact. I don't know how we as a nation can, every time, acknowledge the authority of God while also protecting the absolute freedom of every person to worship or not worship as he sees fit. What I do know, as a carpenter's son, is that a house with a crumbling foundation will not long stand; and what I do know, as a Carpenter's servant, is how much He has loved me and worked in my life.

Humbly,  
Jeremy T. Mull (1L)

## NEWS FROM CAREER SERVICES

### INTERNATIONAL LAW CAREERS

Previously scheduled for Tuesday, Mar. 11, the International Law Careers Seminar has been canceled. Prof. Fidler must go out of town. This seminar will be rescheduled. Please watch for future postings.

### ALTERNATIVE DISPUTE RESOLUTION

The Regional Vice President of the American Arbitration Association will be participating in a brown bag lunch discussion on the subject of alternative dispute resolution on Thursday, Mar. 6 at 12:15pm in Room 121. Please join us to discuss one of the fastest growing areas of the law today.



## NEWS FROM STUDENT ORGANIZATIONS

### EXTERNAL MOOT COURT TEAMS ENJOY SUCCESS

Our flourishing external moot court teams have enjoyed notable successes of late. The weekend of February 21-23, both the Pace Environmental team and the Telecommunications team sponsored by the FCLJ took honors in their respective competitions.

Two teams from IU competed in the National Telecommunications Moot Court at Catholic University in Washington, D.C. Octavia Florence(3L) and Linda Graft(3L) comprised Team One. Team Two, consisting of Wendy Melone(3L), Christine Mason(2L), and Michael Pratt (2L), won first place for Best Brief.

Meanwhile, the Pace team's performance in White Plains, NY won a best oralist award for Angela Moorman(3L). Fellow third-years Tom Ice and Jill Pilcher also represented IU; Pete Dykstra(4L) provided able coaching.

Congratulations to all these hard-working competitors!

### MANY THANKS

The National Telecommunications Moot Court Team members would like to thank all of the students and faculty who helped judge during practice sessions: Cynthia Reichard, Fred Cate, David Suess, Randall Sifers, Rebecca Brackman, Staci Brooks, Norman Yatooma, and Ted Burmeister.

### NITA TRIAL COMPETITION

Congratulations go out to IU's NITA Trial Competition Team,

which finished higher than any IU team has ever finished before in the regional trial competition held in Chicago from Feb. 20-22 of this year. The team of Jay Meisenhelder, Pepe Sanchez and Alan Schuchman, won both of its preliminary rounds on Thursday and Friday, won its semi-final round Saturday morning and then lost in the final round Saturday afternoon, with one of three judges finding that they were the better team.

The other team members: Jason Reese, Adam Mildred and David Durm were instrumental in this success as well. The six team members worked together in preparation for the competition, and were more than anxious to help one another throughout.

Both Alan Schuchman and David Durm are second year students who will have the opportunity to compete again next year. For those of you interested in trial work as an attorney, it is highly recommended that you consider trying out for the team next October. Please do not hesitate to speak with any of the current team members regarding their experiences and what steps you can take between now and next October to prepare yourself for the competition. If anyone has any questions about the NITA Trial Competition, please do not hesitate to call Vince Taylor at 334-0600.

### ILAC

Don't forget every member needs to go on at least one trip to Terre Haute this semester. Many inmates need assistance. Sign-ups are on the ILAC bulletin board.

Following are the remaining trip dates for this semester: Mar. 11, Mar. 25, Apr. 1, and Apr. 8.

### PUBLIC INTEREST LAW FOUNDATION

PILF will meet on Thursday, Mar. 6 at Noon in Room 214.

### CHRISTIAN LEGAL SOCIETY

CLS will meet Wednesday, Mar. 5 at 12:15pm in Room 214. Bible Study is Thursday, Mar. 6 at 5pm in Room 206E of the library. Everyone, including students, faculty and staff, is welcome!

### OUTREACH FOR LEGAL LITERACY

Attention all teachers! We will be having a meeting on Tuesday, Mar. 4 at 12:10pm in Room 214. We will be sharing news about our classrooms and discussing the final trial. Pizza will be served! Look for final trial packets in your mailboxes. If you have any questions please contact Professor Aviva Orenstein or Martha Marion (2L).

### WOMEN'S LAW CAUCUS

The next WLC meeting will be held Wednesday, Mar. 5 at 12:15pm in Room 121. Everyone is welcome.

The WLC would like to extend a huge THANK YOU to the entire law school community for making this year's Auction the best yet! We appreciate your generous support. Thank you to our Auction co-chairs, Julia Florida and Tori Parker. Thanks also to Kathleen Lysaght and Liisi Baumgartner for all their help.

### CASINO NIGHT

Casino Party will be Saturday, Mar. 8, 9pm-1am. Admission is only \$6. There will be free spirits, gambling and dancing. If you would like to be a dealer, please contact Staci Valentine.

Directions: Take Indiana to 17<sup>th</sup>. Take a left on 17<sup>th</sup>. Follow 17<sup>th</sup> across 37. After you cross 37, you



will see a "Terry's" sign on the right. You will also see Ivy Tech. Terry's is in the back of the complex. We are in the downstairs room (Westbury Room).

### **BLSA BARRISTER'S BALL THANKS AND PHOTOS**

On behalf of the 1997 Barrister's Ball Committee of the Black Law Students Association (BLSA), we would like to thank all students, faculty, parents, and partners who attended the Barrister's Ball on Saturday, Feb. 22. A great time was had by all! Look out for the tape! Also, if you took pictures, the proofs are in and you can order them only on Monday, Mar. 3. Someone will be sitting at the table in the lobby from 9-10am and 11am-1pm only. They are 4x6 in size and cost \$2.36 each.

### **INTERNATIONAL LAW ASSOCIATION ELECTIONS**

The International Law Association elections, originally scheduled for last Thursday, will be held this Thursday, Mar. 6 at 12:15pm in Room 120. Positions to be filled are those of president, vice-president, treasurer and secretary. Any 1L or 2L student interested in running for office may do so. Please contact Pat Chastain (3L) with questions. Apologies for any inconvenience.

## **ANNOUNCEMENTS**

### **CLOTHING DRIVE**

Students, Faculty and Staff -- Clean out those closets! Phi Delta Phi and the Christian Legal Society are co-sponsoring a clothing drive the week after spring break. There will be boxes set up around the law school (designated spots to be

announced). Bring your old clothes in and we will donate them to the Opportunity House.

It is time again to prepare the housing billboard which is located on the ground floor closest to the pay phone. Students who wish to lease or summer sublet their apartment/house, or those who are looking for a roommate, need to stop by the Admissions Office (Room 230) and fill out a housing card. We create a list of the availabilities and periodically update them for our admitted students seeking housing.

## **EVENTS, LECTURES**

### **GUEST SPEAKER**

On Monday, Mar. 10, at Noon in the third-floor Faculty Lounge, John Orth, Kenan Professor of Law at the University of North Carolina, will give a talk entitled "Taking from A and Giving to B: Substantive Due Process and the Case of the Shifting Paradigm." Everyone is welcome to attend. For a copy of Orth's paper in advance, and for any further information, contact Steve Conrad.

## **CALENDAR**

### **TUESDAY, MARCH 4**

...Outreach for Legal Literacy Meeting, 12:10pm, Room 214  
...Dean Hoffmann's Talk with Students Regarding U.S. News Law School Rankings, Noon, Room 121

### **WEDNESDAY, MARCH 5**

...CLS Meeting, 12:15pm, Room 214  
...WLC Meeting, 12:15pm, Room 121

### **THURSDAY, MARCH 6**

...PILF Meeting, Noon, Room 214  
...Brown Bag Lunch Discussion with the Regional Vice President of the

American Arbitration Association, 12:15pm, Room 121  
...Int'l Law Association Elections, 12:15pm, Room 120  
...CLS Bible Study, 5pm, Room 206E (library)

### **FRIDAY, MARCH 7**

...Annual Global Symposium, "The Public's Health in the Global Era: Challenges, Responses and Responsibilities," 8:45am-4:30pm, Moot Court Room

### **SATURDAY, MARCH 8**

...Casino Party, 9pm-1am, Terry's--Westberry Room

### **MONDAY, MARCH 10**

...John Orth Presents "Taking from A and Giving to B: Substantive Due Process and the Case of the Shifting Paradigm," Noon, Faculty Lounge



# SCHOOL OF LAW

## 1997 SUMMER SESSION SCHEDULE

<u>Dates</u>	<u>Course Title</u>	<u>Credits</u>	<u>Time</u>	<u>Days</u>	<u>Room</u>	<u>Faculty</u>	<u>Exam</u>
<b>(Registration in University First Summer Session)</b>							
Three Weeks (May 19 - June 10)	B620 Negotiations	2	11:00 am-1:00 pm	M-F	214	Fromm	Final Negotiations Project
Four Weeks (May 27 - June 24)	B745 Conflict of Laws	2	8:45 am-10:10 am	M-R	124	Shreve	6/24 @ 5:00 pm
Eight Weeks (May 28 - July 16)	B774 Environmental Issues in Business Trans.	2	6:00 pm-8:30 pm	W	124	Spalding	7/21 @ 6:00 pm
<b>(Registration in University Second Summer Session)</b>							
Eight Weeks (June 9 - July 31)	B634 Advanced Constitutional Law	3	10:15 am-11:20 am	M-R	124	Baude	(Writing Course)
	B739 Federal Criminal Law	3	12:45 pm-2:25 pm	M-R	124	Hoffmann	7/14 @ 5:00 pm
	B722 Trial Process	3	2:30 pm-5:00 pm	M-T	219 & 214	Bethel	Final Trial
	B601 Criminal Process I	3	11:25 am-12:30 pm	M-R	124	Schornhorst	8/4 @ 1:00 pm
Four Weeks (July 7 - August 1)	B748 Comparative Constitutional Law	2	3:00 pm-4:30 pm	M-R	124	Zoller	8/2 @ 10:00 am
<b>(Registration in both University Summer Sessions)</b>							
Ten Weeks (May 27-July 31)	B501-2 Contracts	5	1:00 pm-2:30 pm	M-R	120	Hicks	8/4 @ 1:00 pm
	B531 Torts	5	10:30 am-Noon	M-R	120	Gjerdingen	8/6 @ 1:00 pm
<b>(Registration in both or either University Summer Session)</b>							
	B688 Community Legal Clinic	3	Arranged	Arranged	Arranged	Tanford/Singleton	None
	B691 Child Advocacy Clinic	3	Arranged	Arranged	Arranged	Orenstein/Hill	None
	B698 Federal Courts Clinic	2	Arranged	Arranged	Arranged	Robel	None
	B710 Independent Clinical Projects	1-4 cr.	Arranged	Arranged	Arranged	Arranged	None
	B706 Credit Research	1-3 cr.	Arranged	Arranged	Arranged	Arranged	None